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## Problems in Legalizing Abortion as a Legal Protection for Rape Victims

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### ABSTRACT

**Background:** Legalization of abortion in Law No. 36 of 2009 is only allowed by two criteria, namely indications of medical emergencies and / or pregnancy due to rape. The act of abortion due to rape can only be done if the gestational age is 40 days at the most, calculated from the first day of the last menstruation. In addition, this legal abortion can only be done by a competent doctor; and by including information from investigators, psychologists, and/or other experts regarding alleged rape. This raises a problem because every doctor adheres to the oath of office attached to each doctor and the period of time given by legislation is considered insufficient to guarantee legal protection for women, especially rape victims. This study aimed to explore problems in legalizing abortion as a legal protection for rape victims.

**Subjects and Method:** This was a normative legal study and refers to the conceptual approach, and the statutory approach. The data were analyzed to give an analytical knife using syllogism deduction by placing two major premises and a minor premise.

**Results:** First, this legal abortion action is in principle contrary to the oath and medical code of ethics which states that each doctor must respect every human life from the moment of conception. Second, related to the period of implementation of legal abortion, Government regulation No. 61 of 2014 provides a period of 40 days calculated from the first day of the last menstruation. The period of time is not enough to determine whether the rape case can be resolved or not because everyone applies a legal principle of the presumption of innocent and it will be very dangerous if the criminal proceedings are continued until the decision has a permanent legal force (*inkracht van gewisde*) which then states that the crime of rape has not been proven, even though the pregnancy has been carried out an abortion has been carried out by only attaching a certificate of alleged rape.

**Conclusion:** The act of abortion was allowed based on two criteria, namely abortion on the indication of medical emergencies and pregnancy due to rape where the pregnancy would cause psychological trauma for the pregnant woman

**Keywords:** abortion, legalization, rape crime, women's protection

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### BACKGROUND

The country actually prohibits abortion which is regulated in Law Number 36 of 2009 concerning Health (hereinafter abbreviated as Law No. 36 of 2009). However, abortion on some medical conditions is the only way that medical personnel must do to save the life of a mother who experiences health problems or serious complications during pregnancy. In different

conditions due to coercion of the will of the perpetrator, a rape victim will suffer physically, mentally and socially.

The practice of abortion is estimated to increase by around 15 percent every year. According to BKKBN data, the number of abortions reached 2.4 million in 2012. This incident was actually carried out by teenagers. The high number of deaths due to abortion affects the high Maternal Mortality Rate (MMR). Whereas MMR is one of

the important indicators of Indonesia's health status, in 2007 there were 228 per 100,000 live births. This number decreases compared to 1991 of 390 per 100,000 live births, in 1997 amounted to 334 per 100,000 live births, in 2002 it was 307 per 100,000 live births. However, MMR increased again in 2012 by 359 per 100,000 live births. It is clear that this figure is far from the Millennium Development Goals (MDGs) target of 102 per 100,000 live births until 2015.

Since the enactment of the Criminal Code (hereinafter abbreviated as KUHP), the legal provisions concerning abortion follow a model of prohibition because abortion is prohibited without exception as provided for in Article 346 to 349 of the Criminal Code which is a copy or derivative of Article 295 to 298 Dutch Penal Code 1881.

After the International Conference on Population and Development (hereinafter abbreviated as ICPD) Cairo 1994 and the 1995 Beijing Fourth World Conference on Women (FWCW), Law No. 36 of 2009 which refers to the ICPD Cairo agreement 1994 concerning women's reproductive rights were arranged. Implicitly legalize abortion because it allows abortion to be safe, quality and responsible for avoiding women who experience Unwanted Pregnancy from the practice of unsafe abortion that often takes women's souls. (Paulinus Soge, 2009).

With reference to the ICPD, the government is criminalizing the act of abortion for unwanted pregnancies due to rape which is more specifically described in Article 75 of Law No. 36 of 2009 stating that:

1. Everyone is prohibited from having an abortion.
2. The prohibition as referred to in Paragraph (1) can be excluded based on:

- a. Indications of medical emergencies detected at an early age in pregnancy, whether threatening the life of the mother or fetus, who suffer from severe genetic disease or congenital defects, or those that cannot be repaired make it difficult for the baby to live outside the womb.
- b. Pregnancy due to rape which can cause psychological trauma for rape victims.

Furthermore, it was agreed with Government regulation No. 61 of 2014 concerning Reproductive Health (for the following abbreviated Government regulation No. 61 of 2014) on July 21, 2014. Several articles that became polemic were Article 31 and Article 34, which stated the existence of legalization of abortion.

Article 31 Government regulation No. 61 of 2014 states that:

Paragraph (1) The act of abortion can only be done based on:

- a. indication of medical emergencies; or
- b. pregnancy due to rape.

Paragraph (2) The act of abortion due to rape as referred to in Paragraph (1) letter b can only be done if the gestational age is 40 (forty) days at the most, calculated from the first day of the last menstrual period.

Article 34 PP No. 61 of 2014:

Paragraph (1) Pregnancy due to rape as referred to in Article 31 Paragraph (1) letter b is a pregnancy resulting from sexual relations without the consent of the woman in accordance with the provisions of the legislation.

Paragraph (2) Pregnancy due to rape as referred to in Paragraph (1) is proven by:

- a. gestational age according to the incidence of rape, stated by a doctor's certificate; and
- b. information from investigators, psychologists, and/or other experts regarding alleged rape.

Government regulations No. 61 of 2014 is very controversial and not ready to be applied. Government regulations No. 61 of 2014 has the main objective which is to ensure the protection and legal certainty which is the government's obligation. Further explained in the general explanation Government regulations No. 61 of 2014 namely:

"Under different conditions due to coercion of the will of the perpetrator, a rape victim will suffer physically, mentally and socially. And pregnancy due to rape will aggravate the mental condition of the victim who had previously been severely traumatized by the rape incident. Severe mental trauma will also adversely affect the development of the fetus that the victim contains. Therefore, most rape victims experience rejection reactions to their pregnancies and want to have an abortion.

In relation to the description of the legalization of the abortion of unwanted pregnancies due to rape, the researchers are interested to examine what constitutes the legitimate basis for justifying abortion both in indications of medical emergencies and victims of rape in Indonesia and why the legalization of abortion is both an indication of medical emergencies and rape victims it cannot be implemented in Indonesia.

## SUBJECTS AND METHOD

In answering legal issues to be analyzed, it is necessary to use research methods that support writing this law. For this reason the methods used, they are presented as follows (Peter Mahmud Marzuki, 2013).

### 1. Type of the study

The type of study used in writing this law is a type of normative legal research. Because according to Peter Mahmud Marzuki, all research relating to the law (legal research or *rechtsonderzoek*) is always normative.

### 2. Approach

The approach used in this research is the conceptual approach (conceptual approach), and the legal approach (statute approach).

### 3. The Nature of Research

The nature of the research used in this study is prescriptive. As a prescriptive science, law studies the purpose of law, values of justice, validity of legal rules, concepts of law and legal norms. As applied science, law establishes the standards of procedures, provisions, signs in implementing the rule of law. Based on this, what will be reviewed normatively is the legalization of abortion actions for unwanted pregnancies due to rape which will be analyzed based on applicable laws and regulations and based on the theory in accordance with this study.

### 4. Sources and Types of Legal Materials

Peter Mahmud Marzuki argues that in legal research there is no data. To solve legal issues and at the same time provide prescriptions about what should be, research resources are needed. The sources of legal research can be differentiated into sources of primary legal research material and sources of research on secondary legal materials, here the researchers describe primary legal materials and secondary legal materials that I use:

#### a. Primary legal material

The primary legal material used by the researcher in this legal research are:

- 1) 1945 Constitution of the Republic of Indonesia;
- 2) Civil Code;
- 3) The Criminal Code;
- 4) Law Number 8 of 1981 concerning Criminal Procedure Law;
- 5) Law Number 23 of 1992 concerning Health;

6) Law No. 36 of 2009; Government Regulation Number 61 of 2014 concerning Reproductive Health.

7) International Conference on Population and Development 1994;

b. Secondary legal material

Secondary legal materials that the author used in this legal research include:

1) The results of scientific work and study relevant or related to this research include theses, dissertations and legal journals.

2) Legal dictionaries, comments on court decisions, magazines, legal articles and legal text books relating to the problems under study.

3) Non-legal materials, specifically in the medical field.

5. Legal material analysis techniques

This study is intended to provide an analytical knife to find answers to legal issues, namely by using syllogism deduction by placing two major premises and a minor premise. According to Philipus M. Hadjon in Peter Mahmud Marzuki's book as a major premise is a rule of law, while the minor premise is a legal fact. In this study, the author used the 1945 Constitution of the Republic of Indonesia, Civil Code, Criminal Code, Law Number 8 of 1981 concerning Criminal Procedure Law, Law No. 36 of 2009, Government regulations No. 61 of 2014 which is. Whereas the minor premise is the legalization of the act of abortion for unwanted pregnancy due to rape. In addition, to analyze using syllogism deduction, the author used legal interpretation.

## DISCUSSIONS

### 1. Abortion Acts According to Law No. 36 of 2009 and Government regulations No. 61 of 2014

Normatively, Article 75 of Law No. 36 of 2009 explains that everyone is prohibited

from having an abortion. However, there are exceptions to the abortion action, namely:

a. Indications of medical emergencies detected at an early age in pregnancy, both those that threaten the life of the mother and/or fetus, those who suffer from severe genetic diseases and/or congenital defects, or those that cannot be repaired making it difficult for the baby to live outside the womb; or

b. pregnancy due to rape which can cause psychological trauma for rape victims.

c. abortion actions based on the above criteria can only be done with the following conditions:

d. before pregnancy is 6 (six) weeks counted from the first day of the last menstruation, except in the case of medical emergencies;

e. by health workers who have the skills and authority that have certificates set by the minister;

f. with the consent of the pregnant mother concerned;

g. with the husband's permission, except the rape victim; and

h. health care providers that meet the conditions set by the Minister.

Previously the provisions of Article 75 of Law No. 36 of 2009 that in principle the abortion is prohibited, but there are some exceptions that are in line with the provisions in Article 31 Government regulation No. 61 of 2014 that the act of abortion can only be done based on: (a) an indication of a medical emergency; or (b) pregnancy due to rape.

Normatively, the act of abortion due to rape can only be done if the gestational age is 40 (forty) days at the most, calculated from the first day of the last menstrual period. In addition, Article 34 Paragraph (1) Government regulations No. 61 of 2014 further explains that pregnancy due to rape

is a pregnancy resulting from sexual intercourse without the consent of the women. It can be interpreted *argutum a contrario* that rape is an act of sexual violence experienced by a woman because she has had sexual relations without the approval of especially from the female side.

To prove that the pregnancy experienced by a woman is a pregnancy due to rape, it must be proven by:

- a. gestational age according to the incidence of rape, stated by a doctor's certificate; and
- b. information from investigators, psychologists, and/or other experts regarding alleged rape.

In Article 35 Government regulations No. 61 of 2014, after verification is made, the normative procedure for administering abortion can be carried out as follows:

- a. Abortion based on indications of medical emergencies and pregnancy due to rape must be carried out safely, qualitatively, and responsibly.
- b. Safe, high-quality, and responsible abortion practices include:
- c. Carried out by doctors in accordance with standards;
- d. carried out in health service facilities that meet the requirements set by the Minister;
  - 1) at the request or approval of the pregnant woman concerned;
  - 2) with the husband's permission, except the rape victim;
  - 3) non-discrimination; and
  - 4) do not prioritize material benefits.
- e. In the event that a pregnant woman cannot give consent, the consent of the abortion can be given by the family concerned.
- f. In the event that the rape victim decides to cancel the desire to have an abortion after obtaining information about abortion or does not meet the conditions for

an abortion, the rape victim can be given assistance by the counselor during pregnancy.

- g. Children born to mothers of rape victims as can be cared for by the family.
- h. In the case of families refusing to care for children born to rape victims, children become foster children whose implementation is carried out in accordance with statutory provisions.
- i. Every abortion must be reported to the head of the district/city health office with a copy of the head of the provincial health office.
- j. The report was carried out by the leaders of health care facilities.

## 2. Rape Crime

The Criminal Code of Crime for rape is regulated in Chapter XIV with the title Crimes against decency, namely in Article 285 which states:

"Anyone with violence or threat of violence forces a woman to have sex with her outside of marriage, and is threatened with rape with a maximum imprisonment of twelve years".

Black's Law Dictionary, formulating rape or rape as follows:

*"...unlawfull sexual intercourse with a female without her consent, The unlawfull camal knowledge of a woman by a man forcibly and against her will. The act of sexual intercourse committed by a man with a woman not his wife and without her consent, committed when the woman's resistance is overcome by force of fear, of under prohibitive conditions..."*. (Topo Santoso, 1997)

According to Steven Box, the notion of rape is the constitution of a particular act of sexual access, namely the penis penetrating the vagina without consent of the female concerned (Made Darma Weda, 1996), which means rape is a fact of sexual rela-

tions, namely penis penetration into vagina without the consent of women.

Wirdjono Prodjodikoro stated that rape is a man who forces a woman who is not his wife to have intercourse with him, so that in such a way he cannot resist, he is forced to commit intercourse (Prodjodikoro, 1986). Whereas according to Soetandyo Wignjosoebroto defines rape as an attempt to vent sexual appetite by a man against a woman in a manner according to morals and or applicable law violates (Marzuki, 1997).

### **3. Abortion as the Act that was in Contrary to the Code of Medical Ethics**

With the issuance of Government regulations No. 61 of 2014 which caused controversy, especially among doctors. The act of abortion can violate the Doctor's Oath, because the fetus in a pregnant woman due to rape was obliged to be respected and saved. Every doctor must cling to his oath which stated that: "I will respect every human life from the moment of conception".

Recitation of Indonesian Doctors' Oath came from the Oath of Hippocrates. The oath of more than 2000 years old Hippocrates remained in the medical profession from generation to generation until now, and made the oath the point of their promise. Therefore, doctor's oath was basically the same in various countries in the world. Hippocrates Oath, Indonesian Doctor's Oath Recitation was confirmed by Government Regulation Number 26 of 1960 which stated as follows: (Soge, 2009)

"I swear/promise that: I will dedicate my life to humanitarian interests; I will carry out my duties in a respectful and moral manner, in accordance with the dignity of my work; I will maintain with all my might the dignity and noble traditions of medical office; I will keep everything I

know because of my work and because of my knowledge as a Doctor; I will always prioritize patient health; In fulfilling obligations to sufferers, I will strive earnestly so that I am not affected by Religious, Nationality, Ethnicity, Political Party, or Social Position considerations; I will give my teachers the respect and proper thank you statement; I will treat my colleagues as siblings; I will respect every human life from the moment of conception; Even if threatened, I will not use my medical knowledge for anything that is contrary to humanitarian law; I express this Oath seriously and maintain my honor".

The statement of the Doctor's Oath Recitation above stated that "I will respect every human life from the moment of conception", containing the understanding that every doctor has a moral obligation to respect every human life and contained demands on all doctors to not memorize the pronouncement only, but it required high motivation to always uphold the human values embodied in the oath, among others, to respect every human life from conception to not having an abortion.

Abortion in the Decree of the Executive Committee of the Indonesian Doctors Association (IDI) Results of the National Medical Ethics III Consultative Meeting on April 22, 2001 concerning the Indonesian Medical Ethics Code and Guidelines for Implementing the Indonesian Medical Ethics Code (KODEKI) stipulated in Article 7d stating that "Every doctor must always remember the obligation to protect the lives of human beings."

KODEKI implementation guidelines article 7d, the provisions of abortion were explained in more detail as follows:

"God Almighty created someone who would face his death. No one would be able to prevent it even a doctor. The strongest instinct in every living creature, including

humans was to defend their lives. For this reason, humans got mind, the ability to think and gather their experiences, so they can develop knowledge and efforts to avoid death. All these efforts were the duty of a doctor. The doctor must try to preserve and maintain the life of human beings. This mean that according to religion, State Law, and Medical Ethics, a doctor was not allowed to:

- 1) Abortion (*abortus provocatus*);
- 2) Ending the life of a patient who according to science and knowledge is unlikely to recover (*euthanasia*).

#### **4. 40-Day Time Period to Conduct Abortion for Pregnancy due to Rape**

Basically, everyone was prohibited from having an abortion. But according to the provisions of Law No. 36 of 2009 concerning Health, the prohibition was excluded based on indications of medical emergencies and pregnancy due to rape. These provisions were further regulated in Article 31 paragraph (2) Government regulation No. 61 of 2014 concerning Reproductive Health, which stated that the act of abortion due to pregnancy due to rape can only be done if the gestational age was no longer than 40 (forty days) calculated from the first day of the last menstruation.

This clause then became a problem if the time period specified in Government regulation No. 61 of 2014 cannot be implemented properly. To answer this problem, the author would review based on the specific regulation in Indonesian criminal law regarding abortion. The most important thing was to see that rape was basically a crime as stipulated in Article 285 which stated that rape was violence or threat of violence forcing a woman to have sex with him outside of marriage, with a maximum imprisonment of twelve years.

To resolve criminal problems, the first step that must be taken was through the mechanism of investigation in the police. Article 1 point 2 of the Criminal Procedure Code explained that an investigation was a series of investigative actions in terms of and according to the method stipulated in this law to search for and collect evidence that and the evidence can solve the crime that occurred and to find the suspect. Based on the formulation of Article 1 point 2 of the Criminal Procedure Code, the elements contained in the definition of investigation are:

- 1) Investigation is a series of actions that contain actions that are related to one another;
- 2) Investigations carried out by public officials called investigators;
- 3) Investigations are carried out based on laws and regulations;
- 4) The purpose of the investigation is to find and collect evidence, with evidence that can solve the crime that occurred, and find the suspect.

Based on these four elements, it can be concluded that before the investigation was carried out, it was known that there was a crime but the crime was not yet clear and the one who did it was not yet known. The existence of a criminal act that was not clear was known from the investigation (Chazawi, 2005).

Investigators according to Article 1 point 1 of the Criminal Procedure Code were state police officers of the Republic of Indonesia or certain civil servants who were specifically authorized by law to conduct investigations. The Criminal Procedure Code further regulated investigators in article 6, which gave limits to investigative officials in criminal proceedings. The limitations of officials in the investigation phase were POLRI investigating officials and civil servant investigators.

In accordance with the discussion in this legal research, Article 34 paragraph (2) Government regulation No. 61 of 2014, stated that pregnancy due to rape must be proven by an investigator's certificate of alleged rape. This article has explicitly determined that the investigator has the authority to issue a letter as a recommendation for the implementation of abortion for pregnancy due to rape.

This investigation was only the beginning if there was an alleged crime of rape because the allegation would be certain if it has obtained a decision that has permanent legal force (*inkracht van gewisde*) and considered that a person was considered innocent in accordance with the legal principle of presumption of innocent. This referred to the Criminal Procedure Code (KUHP) which stated that: Anyone suspected, arrested, detained and or confronted before the Court must be considered innocent before a court ruling declared his guilt and obtained legal force permanent.

In addition, it was also stated in Article 8 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power which stated that: Anyone who is suspected, arrested, detained, prosecuted or confronted before the Court must be considered innocent before a Court ruling states his guilt and has obtained permanent legal force. According to Munir Fuady, the principle of presumption of innocent was a very basic and indisputable principle in every legal system, so if there was a country that still did not recognize this principle, it can be said that the country was still very much behind its civilization (Fuady and Fuady, 2015).

Back to the problem related to the time period given for carrying out abortion for pregnancy due to rape which was 40 days, it was not enough for investigators to

provide their certificate as a recommendation for the implementation of abortion. Therefore, the author would review the Regulation of the Chief of the Republic of Indonesia Police Number 12 of 2009 concerning Supervision and Control of Handling Criminal Cases in the Indonesian National Police (PERKAPOLRI 12 of 2009).

Article 31 paragraph (1) PERKAPOLRI 12 of 2009 stated that the deadline for settling cases was determined based on criteria for the level of difficulty of the investigation:

- 1) Very difficult;
- 2) Difficult ;
- 3) Moderate; and
- 4) Easy

Furthermore, in Article 31 paragraph (2) it was more detailed that the deadline for settlement of cases was calculated starting with the issuance of an Investigation Order covering:

- 1) 120 (one hundred and twenty) days for investigating very difficult cases;
- 2) 90 (ninety) days for the investigation of difficult cases;
- 3) 60 (sixty) days for moderate case investigations; or
- 4) 30 (thirty) days for the investigation of easy cases.

In the investigation of cases of rape, it can be classified as easy case if there was evidence, there were suspects, and there were witnesses who see, hear or know. Whereas rape cases were classified as moderate if there were no witnesses. In rape cases, victims tend to report late, so investigators were late in following up, especially in terms of collecting evidence. In addition, rape victims generally experienced trauma, fear of meeting with others, depression, unwillingness to be touched, and unable to speak systematically, so that investigators waited for the victim to calm down in giving information. Even though



according to the investigator, information would be more valid a few moments after the rape (Sulaksana, 2018)

Based on PERKAPOLRI No. 12 of 2009, the duration of the investigation process was as follows:

- 1) Police report on the existence of a crime is made 1 (one) day. (Article 6 paragraph 1);
- 2) Police reports made at the Police Service Center (SPK) must be submitted and must be received by the Detective Officer who is authorized to distribute the Police Report no later than 1 (one) day after the Police Report is made. (Article 11 paragraph 1);
- 3) The Police Report must have been channeled to the appointed investigator to carry out case investigations no later than 3 (three) days after the Police Report was made. (Article 11 paragraph 3);
- 4) In the case that the Police Report must be processed by another unit after it is recorded in Register B1, the Police Report must be immediately transferred to the unit authorized to handle the case no later than 3 (three) days after the Police Report is made. (Article 12);
- 5) The deadline for settlement of cases is calculated starting from the issuance of an Investigation Order covering 120 (one hundred and twenty) days for very difficult cases, 90 (ninety) days for difficult cases, 60 (sixty) days for medium cases, and 30 (thirty ) days for easy things. (Article 31 paragraph 2);
- 6) Determination of the level of difficulty of the investigation no later than 3 (three) days after the issuance of the Investigation Order. (Article 31 paragraph 4);
- 7) In the case that the investigative deadline cannot be resolved by the investigator, then it can submit an application for an extension of the time of invest-

tigation to an official who gives an order through the Investigating Supervisor (Article 32 paragraph 1).

Based on the time limit of the investigation above, the investigation process can be calculated for cases of rape crimes, the investigator took 38 (thirty eight) days for an easy-to-find case investigation or 68 (sixty eight) days for a medium-sized rape case investigation. The deadline for the investigation can be extended if the investigation process has not been completed.

Government regulation No. 61 of 2014 described the period of time to have an abortion was 40 (forty days) calculated from the first day of the last menstruation. Whereas in the investigation of the time needed to settle an easy group rape case, it was 38 days and can be extended if the investigation has not been completed. In addition, if the evidence was not complete, then there would be an extension of (fourteen) days. If the evidence was incomplete and has passed an additional period of 14 days, the file of criminal offense was returned to the Police Investigator with an extension of 14 days. This extension can occur many times if the evidence was still considered incomplete according to the Prosecutor (P-19), (Article 110 paragraph (4) KUHAP).

Judging from the calculation of the investigation deadline that the author has stated above, the author believed that the regulation of pregnancy abortion due to rape would be difficult to implement. Especially if the rape victims experienced depression/ trauma and did not immediately report to the Police regarding the rape case they experienced. Not to mention the search for legal certainty that there has been a criminal act of rape through a trial process at the court until the decision falls, then this would exceed the required time limit for the abortion to be carried out, if

the gestational age was 40 (forty days) counted from the first day of the last menstruation.

Then in terms of criminal procedure law, every actor suspected of committing a crime of rape attached to the principle of presumption of innocence (presumption of innocence). Someone was considered innocent before a court decision is found guilty and has a permanent legal force (*inkracht van gewisde*). Regarding the principle of presumption of innocence, this referred to the burden of sharing evidence. Because someone was considered innocent, the burden of proof was on the Public Prosecutor who charged that someone has committed a crime (Hiariej, 2012)

A person who was suspected of committing a crime of rape must be proven in advance whether there has been a criminal act of rape. The public prosecutor must prove that a person was truly committing a crime of rape. Because the alleged rape was not true, it could be in the form of the same will (like liking) or slander directed at a man who allegedly raped a woman. This was in accordance with the concept of *Ei Incumbi Probatio Qui Dicit, Non Qui Negat*. A concept derived from Roman law which mean that whoever declared something, then he must prove it (Fuady, 2015).

Based on this analysis some conclusions can be drawn. First, at this time, the action of abortion was a legal act carried out in Indonesia with reference to Law No. 36 of 2009 and Government regulations No. 61 of 2014. The act of abortion was allowed based on two criteria, namely abortion on the indication of medical emergencies and pregnancy due to rape where the pregnancy would cause psychological trauma for the pregnant woman. The implementation of abortion was permissible with the condition that it must be carried out by doctors who have compe-

tence and must include an investigator's statement regarding the alleged crime of rape and a certificate from a psychologist. Regarding the implementtation of legal abortion, in principle each doctor adhered to a position oath which states that each doctor must respect every human life from the moment of conception. So that in the future, every doctor who would carry out a legal abortion would be morally responsible for the oath that was said when he first performed his duty as a doctor.

Second, related to the period of implementation of legal abortion, Government regulations No. 61 of 2014 provided a period of 40 days calculated from the first day of the last menstruation. The time period given was deemed ineffective given that rape was a criminal act of rape, so the existence of a criminal act required a criminal settlement process. Guided by PERKAPORLI No. 12 of 2009, it can be concluded that the period of investigation of a rape crime can take up to 38 (thirty eight) days for an investigation of a relatively easy case or 68 (sixty eight) days. It was not enough to determine whether the rape case can be resolved or not. Even though everyone applied a legal principle of presumption of innocent and it would be very dangerous if the criminal proceedings were continued until they received a decision that had a permanent legal force (*inkracht van gewisde*) and then stated that the crime of rape was not proven, even though the pregnancy had been carried out only attach a statement of alleged rape.

Based on these conclusions, the authors provide some suggestions. First, the government must review the time given to carry out the abortion. In the future, the government can examine various guidelines such as the ideal duration of abortion from a medical perspective or from a religious perspective.

Second, regarding the differences in the views of the code of ethics regarding the oath of the doctor, the government must provide an understanding for each doctor appointed and has the authority to make an abortion to understand that the act of abortion is actually good when viewed from legal protection for rape victims. Because women victims of rape have the right to determine whether they will continue their pregnancy or not.

## REFERENCES

- Data Survey Demografi dan Kesehatan Indonesia (SDKI) tahun 1991-2012.
- Direktorat Jenderal Bina Gizi Dan Kesehatan Ibu Dan Anak. 2013. "Rencana Aksi Nasional Pelayanan Keluarga Berencana 2014-2015". Kementrian Kesehatan RI: Jakarta.
- Hiariej EOS (2012). Teori & Hukum Pembuktian. Erlangga: Jakarta.
- Ekototama S, et al. (2001). Aborsi provokatus bagi korban perkosaan perspektif iktimologi, Kriminologi dan Hukum Pidana. Universitas Admajaya: Yogyakarta.
- Fuady M, Fuady SL (2015). Hak asasi tersangka pidana. Cetakan Pertama. Jakarta: Kencana.
- Government regulation Number 61 Year 2014 on Reproductive Health.
- Marzuki PM (2013). Penelitian Hukum. Edisi Revisi. Jakarta: Kencana Prenada Media Group.
- Marzuki S (1997). Pelecehan Seksual. Fakultas Hukum Universitas Islam Indonesia: Yogyakarta.
- Mochtar R (1998). Sinopsis Obsetetri. EGC: Jakarta.
- Muhdiono (2001). Aborsi Menurut Hukum Islam (Perbandingan Madzab Syafi'i dan Hanafi). Skripsi. UIN: Yogyakarta.
- Peraturan Pemerintah Nomor 26 Tahun 1960 tentang Lafal Sumpah Dokter Indonesia.
- Peraturan Kepala Kepolisian Republik Indonesia Nomor 12 Tahun 2009 tentang Pengawasan dan Pengendalian Penanganan Perkara Pidana di Lingkungan Kepolisian Negara Republik Indonesia.
- Prodjodikoro W (1986). Tindak-tindak Pidana Tertentu di Indonesia. Eresco: Bandung.
- Santoso T (1997). Seksualitas dan hukum pidana. IND.HILL-CO: Jakarta.
- Soge P (2009). Legalisasi aborsi di Indonesia perspektif perbandingan hukum pidana: Antara Common Law System dan Civil Law System. Jurnal Hukum. 4(16).
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- Undang-Undang Nomor 8 Tahun 1981 tentang Pokok-Pokok Hukum Acara Pidana.
- Undang-Undang Nomor 23 Tahun 1999 tentang Kesehatan.
- Undang-Undang No. 48 Tahun 2009 tentang Kekuasaan Kehakiman
- Undang-Undang Nomor 36 Tahun 2009 tentang Kesehatan.
- Weda MD (1996). Kriminologi. Raja Grafindo Persada: Jakarta.